

MARINE RADIO COMMUNICATIONS ASSOCIATION OF THE PHILIPPINES, INC. (MARCAPI), ROBERTO GAYA, DAVID ZAFRA AND SEGUNDO P. LUSTRE, JR., PETITIONERS, VS. HON. RAINERIO O. REYES, IN HIS...

G.R. No. 86953. November 06, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioners are self-described "Filipino entrepreneurs deeply involved in the business of marine radio communications in the country." [1] They are also operators of "shore-to-ship and ship-to-shore public marine coastal radio stations" [2] and are holders of certificates of public convenience duly issued by the National Telecommunications Commission. Among other things, they handle correspondence between vessel passengers or crew and the public. [3]

Sometime in July, 1988, the Department of Transportation and Communications unveiled an P880-million-maritime coastal communications system project, designed to "ensure safety of lives at sea (SOLAS) through the establishment of efficient communication facilities between coast stations and ship stations and the improvement of safety in navigational routes at sea." [4] It was set out to provide, among other things, ship-to-shore and shore-to-ship public corresponding, free of charge. [5]

On August 1, 1988, Atty. F. Reyes Cabigao, in his capacity as counsel for the petitioner, Marine Radio Communications Association of the Philippines, Inc., addressed an appeal to then Secretary Rainerio Reyes, in the tenor as follows:

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But you undoubtedly would understand their fears. It was their feeling that entry of the government into their line of business would certainly spell for them financial ruin as it would put into serious doubt the viability of the entire marine radio communications industry. They say that, as it is today, the industry is not viable enough. What more, they ask, if the government steps in and eventually dips its strong fingers into the pie? [6]

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On August 17, 1988, the Secretary forwarded a reply, denying Atty. Cabigao's request, for the following reasons:

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MARCAPI's main business concern is public correspondence. This means that MARCAPI handles only correspondence between passengers or crew on board ship and their respective offices or residences. On the other hand, the Maritime Coastal Communications System Project to be implemented by 1989 will offer services in watch and distress signal, medical and meteorological services, port services, and public correspondence, in their order of priority.

You will note that public correspondence is only fourth in the order of priority of services to be offered by the present maritime project. Primarily, it will offer distress and safety communications service which is obligatory in the maritime mobile service. This consists of monitoring by coast stations of distress signal from ships in trouble and relaying the messages to the Philippine Coast Guard which will undertake the search and rescue operations. It also includes safety communication which refers to weather broadcast and typhoon signals that will be broadcast by the coast stations regularly. These services are offered to the public for free.

It is worth noting, as it is significant, that the confidence of the public in the competence of private firms to carry out the aforementioned objectives has already been eroded. After that tragic incident of the sinking of MV Dona Paz, the National Telecommunications Commission and MARINA conducted constant monitoring by sending distress signals. Out of 1,000 licensed private operators, only one (1) responded to the signal.[7]

On February 20, 1989, the petitioners brought the instant suit, alleging, in essence, that Secretary Rainerio Reyes had been guilty of a grave abuse of discretion.

On June 7, 1990, the Court issued a Resolution, in view of the departure of Secretary Rainerio Reyes, requiring the present incumbent, Secretary Oscar Orbos, to inform the Court whether or not the Department is adopting the action of Secretary Reyes. On August 16, 1990, Assistant Secretary Wilfredo Trinidad informed us that Secretary Orbos is adopting the action complained of.

The petitioners hold that the Department can not compete in the business of public correspondence, and rely on the provisions of Section 20, of Article II, of the Constitution, which states:

Sec. 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

The Solicitor General, on the other hand, submits that in spite of the above provision, the Government "cannot abandon its ministerial functions of rendering public services to the citizenry which private capital would not ordinarily undertake, or which by its very nature is better equipped to administer for the public welfare than by any private individual or entity." [8]

There is no merit in this petition.

The duty of the State is preeminently, "to serve...the people," [9] and so also, to "promote a just and dynamic social order...through policies that provide adequate social services... and an improved quality of life for all." [10]

The objectives of government, as expressed in the Charter, are, among other things, "a more equitable distribution of opportunities, income, and wealth...[and] a sustained increase in the amount of goods and services produced by the nation for the benefit of the people..." [11] With respect in particular to property, the Constitution decrees:

Sec. 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands. [12]

There can hardly be any valid argument against providing for public correspondence, free of charge. It is compatible with State aims to serve the people under the Constitution, and certainly, amid these hard times, the State can do no less.

The petitioners can not legitimately rely on the provisions of Section 20, of Article II, of the Constitution, to defeat the act complained of. The mandate "recogniz[ing] the indispensable role of the private sector" is no more than an acknowledgment of the importance of private initiative in building the nation. However, it is not call for

official abdication of duty to citizenry.

The novel provisions of the Charter prescribing private sector participation, especially in the field of economic activity,[13] come, indeed, no more as responses to State monopoly of economic forces which has unfairly kept individual initiative from the economic processes and has held back competitiveness in the market. The Constitution does not bar, however, the Government from undertaking its own initiatives, especially in the domain of public service, and neither does it repudiate its primacy as chief economic caretaker of the nation.

The principle of laissez faire has long been denied validity in this jurisdiction. In 1969, the Court promulgated *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corporations and Offices*,[14] where it was held:

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x x x The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only "because it was better equipped to administer for the public welfare than is any private individual or group of individuals," continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course this development was envisioned, indeed adopted as a notional policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice.[15]

The requirements of social justice and the necessity for a redistribution of the national wealth and economic opportunity find in fact a greater emphasis in the 1987 Constitution, notwithstanding the novel concepts inscribed there.[16] And two decades after this Court wrote it, ACCFA's message remains the same and its lesson holds true as ever.

The Court is not of the thinking that the act complained of is equivalent to a taking without just compensation. Albeit we have held that "[w]here the owner is deprived of the ordinary and beneficial use of his property or of its value by its being diverted to public use, there is taking within the constitutional sense,"[17] it does not seem to us that the Department of Transportation and Communication, by providing for free public correspondence, is guilty of an uncompensated taking. Rather, the Government merely built a bridge that made the boat obsolete, although not entirely useless. Certainly, the owner of the boat can not charge the builder of the bridge for lost income. And certainly, the Government has all the right to build the bridge.

WHEREFORE, the petition is DISMISSED. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Feliciano, J., on leave.

Padilla, J., no part.

[1] Rollo, 5.

[2] Id., 6.

[3] Id., 13.

[4] Id., 55.

[5] Id., 61.

[6] Id., 56.

[7] Id., 61.

[8] Id., 78-79.

[9] CONST., art. II, sec. 4.

[10] Supra, sec. 9.

[11] Supra, art. XII, sec. 1.

[12] Supra, sec. 6.

[13] See supra, art. XII, sec. 1; sec. 20.

[14] Nos. L-21484 and 23605, November 29, 1969, 30 SCRA 649.

[15] Supra, 662.

[16] See CONST., art. II, supra; art. XII, supra, art. XIII.

[17] Municipality of La Carlota v. National Waterworks and Sewerage Authority, No. L-20232, September 30, 1964, 12 SCRA 165, 167.

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